

Potential Authorities to Mandate Water Conservation Measures (2/08)

The State Water Board has broad powers that could be used to mandate water conservation measures. To a lesser degree, California's nine Regional Water Quality Control Boards also have powers that could effect water conservation.

The following are some of those authorities and challenges to their use:

Waste and Unreasonable Use Regulations. The State Water Board (and/or the Department of Water Resources) can adopt regulations requiring measures to prevent waste or unreasonable use of water.

The challenge: establishing the technical basis for the requirements to be included in the rulemaking; the cumbersomeness of the Administrative Procedure Act's rulemaking provisions, and the lack of enforcement authority. Except to the extent the State Board can condition grants, waste discharge requirements, or water rights on compliance with conservation regulations, the Board would likely have to go through three steps to enforce against a violation of the regulations: 1) issue an adjudicative order requiring compliance with the regulation; 2) issue a cease and desist order for violation of the adjudicative order; and 3) issue an administrative civil liability for violation of the cease and desist order. The maximum potential penalty, after all of that, is \$1000 per day.

Waste and Unreasonable Use Adjudicative Orders. The State Board can implement the constitutional waste and unreasonable use provision whenever it takes an adjudicative action concerning a water right. It can require conservation reporting or water conservation programs in water right permits, and as a condition of approvals for change petitions, temporary urgency change petitions, or transfers. Existing water right permits can be reopened and reissued with new conservation terms. Similarly, the State Board could issue targeted cease and desist orders for waste and unreasonable use.

Water Conservation Planning. Water conservation requirements can be included in basin plans. While underutilized, some regional basin plans already require consideration of conservation and water reuse measures.

To the extent DWR addresses conservation in the California Water Plan (B160), the regional boards could consider and then order actions consistent with the California Water Plan.

In addition, DWR could impose rates on its contractors designed to encourage conservation or require that its contractors adopt rate structures that do so. In addition, the State Board, as a condition of permits, change orders, etc. could require rate structures that promote conservation.

The challenge: lack of experience with water conservation measures and political will to impose state rate requirements.

Water Conservation Orders. The Boards could include conservation provisions in waste discharge requirements. For stormwater permits, this could include eliminating dry weather discharges.

The challenge: This could require connections to publicly owned treatment works.